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HORTON, YVONNE MICHELE

ART UNIT	PAPER NUMBER
3635	

DATE MAILED: 07/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No. 10/068,589	Applicant(s) STEPHEN RASKIN ET AL.
Examiner YVONNE M. HORTON	Art Unit 3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on Jan 16, 2003.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-16 is/are pending in the application.

4a) Of the above, claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-3 and 5-16 is/are rejected.

7) Claim(s) 4 is/are objected to.

8) Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) Notice of References Cited (PTO-892)

4) Interview Summary (PTO-413) Paper No(s). _____

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

5) Notice of Informal Patent Application (PTO-152)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____

6) Other: _____

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DETAILED ACTION

Specification

1. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: there is no support in the specification for the “plurality of inner walls” or the “elongated projections” of claim 1. Clarification and correction are required.

Claim Objections

2. Claim 9 is objected to because of the following informalities: Claim 9 appears to repeat language that was previously claimed in line 3 of claim 8. Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 5-7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Claim 5 recites the limitation "said outer walls" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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7. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent #3,382,639 to SMITH et al. SMITH et al. discloses the use of a structural beam member for forming a structure (10) including an extruded elongated member (B,C) having a plurality of inner walls (13,14) with a plurality of elongated projections (19) disposed centrally thereon; wherein an elongated reinforcing slat (21) is fixedly connected to projections (19). In reference to claim 2, the beam (B,C) has a generally rectangular cross-section, see figure 2.

8. Claim 5 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent #5,134,250 to CAVENEY et al. CAVENEY et al. discloses the use of a structural member (11) including an elongated element (12) having a plurality of inner walls (14,16) each having an inner surface (colored blue) and an outer surface (colored red); wherein the outer surface defines an anchoring member (18) such that a reinforcing slat (13) defining a female receptor (FR) formed by arms (21,22) is connected to the anchoring member (18). In reference to claim 6, the structural element (11) is generally rectangular shaped.

9. Claims 8-10 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent #3,382,639 to SMITH et al. SMITH et al. discloses the use of a structural beam member for forming a structure (10) including an extruded, generally rectangular, hollow elongated member (B,C); a reinforcing insert (21) coincident with the length of the member (B,C)' at least one elongated connecting rail (19) attached to an inner wall (13,14) of the beam (B,C); wherein an elongated channel (colored orange) is defined by the reinforcing insert (21) coming in to inter-fitting relationship with the rail (19). In reference to claim 9, the beam (B,C) has a generally

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rectangular cross-section, see figure 2. Regarding claim 10, the rail (19) and channel (colored orange) projects outwardly from a common end (colored green).

10. Claims 13-15 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent #5,442,885 to LAVEN et al. LAVEN et al. discloses the method of reinforcing a support member (B,C) comprising the steps of providing an extruded hollow beam (12) having a plurality of interconnected walls (16,20,24) including a plurality of projecting lugs (28) integrally connected to and inside surface thereof; providing a reinforcing insert (1) defining a plurality of recesses (5) adapted to matingly engage the lugs (28); and connecting the insert (1) to the beam (12) by inter-fitting the lugs (28) within the recesses (5); wherein the insert (1) is inherently sized and positioned relative to the beam in accordance to engineering calculations. Regarding claim 14, the structure of LAVEN et al. being used to form a box frame, inherently includes the step of incorporating a plurality of beams (12). In reference to claim 15, the reinforcing insert (1) is metal, column 1, line 49.

11. Claim 16 is rejected under 35 U.S.C. 102(b) as being anticipated by US Patent #5,660,119 to PERKINS. PERKINS discloses the use of a rectangular strut (16) having four wall (22,40,44) that meet at corner intersections and define a space; wherein a transverse web (24) extends from one corner to a diagonally opposing corner, see figures 2 and 3.

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

13. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459

(1966), that are applied for establishing a background for determining obviousness under 35

U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

14. Claims 3,11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over US

Patent #3,382,639 to SMITH et al. in view US Patent #6,385,941 to POWER, Jr et al.

As detailed above, SMITH et al. discloses the basic claimed structural member except for explicitly stating that the beam and reinforcing members are metal. Although SMITH et al. does not explicitly disclose the use of metal, he does disclose that his members are extruded.

POWER, Jr. et al. discloses that his frame members and inserts are made from metal, column 5, lines 60-64. Hence, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the structure of SMITH et al. from metal in order to form a frame that is strong and very durable. Metal frame members are old and very well known in the art and a metal building frame would prove useful in environments subject to extreme external conditions such as earthquakes or strong wind situations.

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15. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #5,134,250 to CAVENEY et al. in view of US Patent #6,385,941 to POWER, Jr. et al. CAVENEY et al. discloses the basic claimed structural member except for explicitly stating that the beam and reinforcing members are metal. POWER, Jr. et al. discloses that his frame members and inserts are made from metal, column 5, lines 60-64. Hence, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the structure of CAVENEY et al. from metal in order to form a frame that is strong and very durable. Metal frame members are old and very well known in the art and a metal building frame would prove useful in environments subject to extreme external conditions such as earthquakes or strong wind situations.

Allowable Subject Matter

16. Claim 4 remains objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

17. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne M. Horton whose telephone number is (703) 308-1909.

YMH

July 24, 2003



Carl D. Friedman
Supervisory Patent Examiner
Group 3600